

## **REMARKS**

In the Office Action dated October 31, 2006, claims 1-31 were subjected to an election of species requirement under 35 U.S.C. §121. The Examiner described the respective six species by reference to the specification. This method of identifying the species is not understood, since it is only the *claimed* subject matter that is relevant under 35 U.S.C. §121. Correlating the passages in the specification cited by the Examiner with the claimed subject matter of the present application, it appears that the Examiner considers claims 2 and 19 to represent a first species, claims 3 and 20 to represent a second species, claims 4 and 21 to represent a third species, claims 5 and 22 to represent a fourth species, claims 7 and 24 to represent a fifth species, and claims 8 and 25 to represent a sixth species. The Examiner also stated that currently no claim is considered to be generic.

This election of species requirement is respectfully traversed, as is the Examiner's statement that currently no claim is generic.

Independent claim 1 claims a module that is insertable into a hearing aid device, the module having an acousto-electrical transducer and an electro-acoustical transducer that are pre-combined in the module with each other. Since these components are pre-combined, the unavoidably-present feedback between these two components is essentially fixed, and thus a measurement thereof that is specifically associated with the module can be made, and the module therefore further includes a signal processor that suppresses this feedback. Because of the pre-combination of the components, that results in an essentially fixed, and therefore one-time measurable feedback, the signal processing unit in the module can

effectively and simply be programmed to suppress this specifically measured feedback.

Independent claim 17 claims a hearing aid device containing such a module.

The aforementioned dependent claims that correspond to the embodiments in the present specification identified by the Examiner simply provide further details of this basic structure. None of those dependent claims is in any way inconsistent with any of the language of independent claims 1 and 17. Each of those dependent claims simply adds to the structure already identified in the independent claims. Applicants therefore submit that each of independent claims 1 and 17 is a generic claim covering all of the identified embodiments.

As to the election of species requirement itself, the Examiner stated the species are independent or distinct because they demonstrate different configurations of hearing aids. Applicants respectfully submit that this brief conclusion does not satisfy the requirements of particularity as set forth in MPEP §808.01, which states that a mere statement or conclusion is inadequate. This is important because, as stated in MPEP §808.01(a), if there is no disclosure of a relationship between the species, they are independent inventions. Therefore, the Examiner should not make an election of species requirement unless the Examiner is prepared to conclude, for example, that if the Examiner finds prior art that the Examiner believes to disclose all of the elements of claim 4, but finds no prior art with regard to the subject matter of claim 5, the Examiner would not reject claim 5 simply on the basis of being obvious under 35 U.S.C. §103(a) over the prior art used for claim 4, because this would be inconsistent with the Examiner's conclusion that claim 5 is a "separate and distinct" species from claim 4. Since the Examiner has not

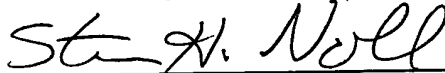
given a detailed substantiation of the Examiner's reasons for imposing the election of species requirement, the record does not currently indicate whether the Examiner does or does not believe the above example applies.

There is thus a "quid pro quo" that forms the basis for imposing an election of species requirement. The Applicants are required to elect a single species for examination, but if the election of species requirement is properly substantiated, the Applicants do so based on the knowledge that the Examiner truly considers the species to be patentably distinct from each other. If the Examiner has not made statements of record that provide evidence on this point, then Applicants are being required to make an election without giving the Applicants the aforementioned benefit that follows from such an election, namely of being assured that none of the species will be considered obvious in view of the other.

Nevertheless, Applicants recognize the requirement for Applicants to elect a species, even if the election requirement is traversed. If the election of species requirement is maintained, therefore, Applicants elect the subject matter of the second species for immediate examination. The claims readable on this species are claims 3 and 20.

Early consideration of the application on the merits is respectfully requested.

Submitted by,



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